

MULTIMEDIA



UNIVERSITY

STUDENT ID NO

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MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2020/2021 SESSION

UCP4622 – CRIMINAL PROCEDURE II

(All Sections / Groups)

17 March 2021

Reading Time: 9.15 am – 9.30 am

(15 Minutes)

Answering Time: 9.30 am – 12.30 pm

(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes **ONLY** in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.
2. This Question paper consists of 5 pages with 5 Questions only.
3. This paper consists of two parts. **PART A** is **COMPULSORY**. **PART B** to attempt either **Question 4A or 4B**. The distribution of the marks for each question is given.
4. Students are only allowed to bring in **CLEAN AND ORIGINAL COPY** of the Criminal Procedure Code into the exam venue. "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.
5. Please write all your answers in the Answer Booklet provided.

PART A: COMPULSORY.
ATTEMPT ALL QUESTIONS

QUESTION 1

While conducting surveillance, a sergeant from the police force and his team saw OKT looking suspicious and approached him, introducing themselves as the police. OKT kept mum when he was questioned as to whether he kept any incriminating items. After conducting a body search on OKT, the police officer found a blue plastic package which contained transparent plastic containing clear solids suspected to be syabu. OKT was arrested and handed to the investigating officer together with the items seized. The chemist confirmed that the items were indeed 53.73g of methamphetamine. On 3 November 2020, OKT was charged in the High Court with an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ('the DDA'). When the charge was read and explained to OKT, he nodded to indicate that he understood the charge and OKT claimed trial. OKT was represented and the court fixed 2 December 2020 for case management. Pursuant to a written representation to the Public Prosecutor put up by OKT's learned counsel, the prosecution agreed to proffer an alternative charge against OKT. On 2 December 2020, OKT pleaded guilty to the alternative charge which was possession of drugs under s. 12(2) of the DDA and was sentenced under s. 39A(2) of the DDA to nine years imprisonment and ten strokes of the rotan. The said s. 39A(2) provides for increased penalties where a person found guilty shall be punished with imprisonment for life or for a term which shall not be less than five years, and he shall also be punished with whipping of not less than ten strokes. Dissatisfied with the decision of the judge, the prosecution filed an appeal against the sentence as the amount of drugs was too big and could trigger the statutory assumption of trafficking.

Based on the above –

- (a) Ascertain the pre-trial process or processes until and on 2 December 2020 and analyse whether the legal and statutory requirements have been complied with. (12 marks)
- (b) Examine whether the trial judge had taken into consideration all the relevant factors and applied the correct judicial principles in sentencing OKT. (13 marks)

(Total: 25 marks)

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QUESTION 2

OKSan and OKTan were on a motorcycle on their way to a fishing pond on 2 April 2020 at about 5.00 pm when they were stopped by policemen, who were patrolling. They were unable to provide a valid reason for being out on a motorcycle and were told to go back home in view of the movement control order (MCO) imposed under the Prevention and Control of Infectious Diseases (Measures within Infected Local Areas) (No. 2) Regulations 2020. They refused to do so and were arrested under s. 269 of the Penal Code. OKSan and OKTan were jointly charged in the Magistrate's Court for an offence under the Regulations. On conviction, an accused person would be liable to a fine not exceeding RM1000 or to imprisonment for a term not exceeding 6 months or to both. OKSan and OKTan were not represented and pleaded guilty to the charge. They were accordingly found guilty and convicted. Their plea in mitigation was that the act of fishing was in order to place food on the table for the family as they were unable to go out to work in order to earn and feed their respective families. They were daily wage earners who did house repairs. OKSan and OKTan admitted to the court that they would be unable to pay a fine if imposed by the court and thus willing to be imprisoned, if sentenced by the court. In reply, the prosecution submitted that their plea in mitigation should be outweighed by public interest which demanded that the duo had to be indoors so as to comply with the MCO. Both OKSan and OKTan were sentenced to a period of 3 months' imprisonment. The case was widely reported in the media and public outcry over the sentence was also reported.

Based on the above -

- (a) Ascertain the procedural facility available to OKSan and OKTan to consider whether the sentence should be interfered with in the interest of justice. (8 marks)
- (b) Identify the powers of the judge and the orders that may be made if the procedural facility is invoked. (7 marks)
- (c) If OKSan and OKTan were to appeal against sentence, examine the principle if the court were to grant a stay of execution. (10 marks)

(Total: 25 marks)

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QUESTION 3

- (a) OKT1 and OKT2 were charged for murder under s. 302 of the Penal Code. The prosecution case was that OKT1 and OKT2 attacked and killed one Mani. During investigation, Govind gave statements to the police that he entered into OKT1's room at or about the time when Mani was killed. In his evidence in court as a prosecution witness, he said that he did not enter OKT1's room at that time and did not know if OKT1 was there, and that he never entered OKT1's room.

Ascertain the procedure to discredit Govind by the prosecution.

(12 marks)

- (b) DBS was found dead at a river. The body was brought to the hospital where the post mortem officer (PMO) estimated the time of death at within 24 to 36 hours. Based on the results of the post mortem, the PMO concluded, among others, that DBS died from drowning. The investigating officer (IO) had also concluded that based on his investigation, there were no criminal elements involved in the death of DBS. The verdict of the Coroner was that DBS came to his death by drowning, a misadventure and no person or persons were criminally concerned for the cause of his death whether by way of any act or omission. The younger brother of DBS was dissatisfied with the verdict.

Based on the above –

- (i) Criticise the process of death inquiry in Malaysia.
- (ii) Determine the process to disturb verdict of the Coroner.

(7 marks)

(6 marks)

(Total: 25 marks)

Continued...

PART B: ATTEMPT EITHER QUESTION 4A OR QUESTION 4B**QUESTION 4A**

- (a) The accused was charged in the Sessions Court at Kuala Lumpur under s. 409 of the Penal Code. The accused claimed trial to the charge. At the commencement of the trial, the court proceeded to take all evidence that the prosecution produced in support of its case against the accused.

Elucidate the following –

- (i) Evidence to be taken in presence of accused (4 marks)

- (ii) Manner of recording evidence (3 marks)

- (iii) Evidence by protected witness (5 marks)

- (b) Two men were charged with house breaking to commit theft, pursuant to s. 457 of the Penal Code. After the charge was read and explained to the two men, each of them was asked, "Do you plead guilty?" Accordingly, the two men pleaded guilty. When the facts of the case were read to the two men, they looked confused and did not admit nor disagree with the facts. The Magistrate accepted the facts, convicted and sentenced the two men to 18 months' imprisonment, to take effect from the date of arrest and a fine of RM1000 and in default of payment of that fine, a further 6 months' imprisonment.

Examine the plea of guilty, conviction and sentence.

(13 marks)

(Total: 25 marks)

Continued...

QUESTION 4B

Ahmad ran amok and slashed his neighbour, Abu to death. Ahmad was later charged with the offence of murder under s. 302 of the Penal Code. At the commencement of the trial, the defence counsel told the trial judge that Ahmad was unfit to stand trial as he was suffering from unsoundness of mind and that he would rely on unsoundness of mind as a defence to the charge.

Based on the above –

- (a) Ascertain the procedure for the trial of Ahmad. (8 marks)
- (b) Determine whether Ahmad is fit to stand trial. (12 marks)
- (c) If Ahmad is found to be unfit to stand trial, determine the fate of Ahmad. (5 marks)

(Total: 25 marks)

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